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Hon. Walter C. Miller  
Administrative Law Judge  
Federal Communications Commission  
2000 L Street, N.W.  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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Re: Elehue Kawika Freemon, et al. v.  
AT&T Corp., File No. E-90-393

Dear Judge Miller:

AT&T has received Mr. Freemon's January 30 filing that purports to respond to Your Honor's directive to the parties to submit proposed findings of fact and conclusions of law. AT&T does not intend to file reply findings and conclusions in response to that document. However, AT&T's review indicates that Mr. Freemon's submission does not remotely satisfy Your Honor's directive to him at the December 13 hearing regarding the need for compliance with the Commission's procedures for a filing of this type.

Only the portion of Mr. Freemon's filing through paragraph 19 clearly represents a request for Your Honor to enter any factual findings. (Moreover, that portion of his filing is solely devoted to proving that Mr. Freemon attempted to place a collect call to his mother at 10:30 p.m. on May 30, 1988, a fact that is not in dispute.) The remainder of the filing is largely incomprehensible, but those portions that AT&T is able to understand attempt to raise two matters that are not properly before Your Honor.

First, in paragraphs 20-44 Mr. Freemon argues that the written testimony of Thomas C. Sharpe (AT&T Exhibit B) should be excluded for failure to lay a foundation regarding the manner in which AT&T's operator,

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Nancy Zolnikov, operated the TSPS No. 1B equipment on the date in question.<sup>1</sup> Mr. Freeman ignores the fact that Mr. Sharpe's testimony was admitted in this proceeding at the November 28 evidentiary admission session, where Mr. Freeman stated he had no objection to that evidence. See Tr. at p. 124. He should not be permitted now to contest the admissibility of that testimony, especially in a filing restricted to the submission of proposed facts or conclusions supporting his claims.<sup>2</sup>

Additionally, in paragraphs 45 through 53 and 73-78 Mr. Freeman contests Your Honor's decision excluding from evidence Freeman Exhibit 2 for identification, a purported report from the Oregon Emergency Services ("OES") concerning this incident. See Tr. at pp. 91-92. Mr. Freeman previously contested that ruling in his December 3 "Counter-motion," which Your Honor denied as "a backhanded attempt to reintroduce into evidence, evidentiary materials that have already been rejected." See December 12 Memorandum Opinion and Order (FCC 94M-640), ¶ 7. His renewed challenge to that ruling now is equally improper.

While Mr. Freeman has devoted the bulk of his filing to these irrelevancies, he has failed to submit proposed factual findings concerning numerous critical areas of this case, including showing (i) that any interception of a conversation with his mother in fact occurred; (ii) that their conversation was divulged to any third person(s); (iii) the identity of the person(s) who allegedly intercepted and/or divulged the conversation; (iv) that AT&T was responsible for the alleged interception and divulgence; and (v) that either of the Freemons suffered any cognizable injury as a result of the alleged interception or divulgence. In view of these clear failures of proof, a decision on the merits must be entered in AT&T's favor.

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- <sup>1</sup> Mr. Freeman's objection to the Sharpe testimony is groundless. Mr. Sharpe testified that the TSPS No. 1B equipment was not engineered to permit Ms. Zolnikov to interrupt a conversation in progress between the Freemons and to speak to Mrs. Freeman while "blinking out" Mr. Freeman from that discussion, as Mr. Freeman has claimed. It is therefore beside the point that Mr. Sharpe had not reviewed Ms. Zolnikov's deposition testimony.
- <sup>2</sup> Mr. Freeman's additional request (¶ 79) that the Commission conduct "a full investigation by the FCC electronic experts familiar with [the TSPS No. 1B] and field experimentations [sic]" is likewise improper.

In addition, AT&T requests a finding, as part of the decision on the merits, that Mr. Freemon's deficient submission is tantamount to an unexcused failure to file findings and conclusions. AT&T also asks Your Honor to find that, as a result, Mr. Freemon has waived the right to participate further in this proceeding, as provided in Section 1.263(c) of the Commission's Rules, 47 C.F.R. § 1.263(c).

Very truly yours,

A handwritten signature in cursive script, appearing to read "Keith Nichols".

cc: Elehue K. Freemon  
Keith Nichols, Esq.